IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:- 20.9.2006

Ramjhan

...Appellant

Versus

Partap Singh and others

...Respondents

CORUM: HON'BLE MR.JUSTICE RANJIT SINGH

Present:- Mr.R.M.Suri, Advocate for the appellant.

Mr.Rajesh Sheoran, Advocate for claimant.

Mr.M.B.Singh, Advocate for insurance company.

RANJIT SINGH, J.

Owner is in appeal against the award given by the Motor Accident Claims Tribunal Bhiwani mainly on the ground that the Insurance Company was wrongly made to escape liability in this case.

The facts, in brief, are that on 9.1.85, Man Singh (deceased) and Dayal Singh were proceeding in Truck No.HRR-8853 on Gignow Loharu Road, when another Truck No.RJV 4681 came from opposite direction and while being driven in a rash and negligent manner struck against truck No.HRR 8853. As a result of this accident, Man Singh received injuries and died at the spot. He was second driver of truck No.HRR 8853, which belonged to Partap Singh. Truck No.RJV 4681 was owned by Ramjhan and was insured with M/s New India Assurance Company Limited (respondent No.3). Two claim petitions were filed, one by Roshni Devi, legal representative of Man Singh (deceased) claiming

compensation of Rs.2 lacs, while another claim petition was filed by Partap Singh, owner of the truck claiming compensation of Rs.33,000/- due to damage suffered by the truck owned by him. Ramjhan raised pleas about maintainability of claim petitions and the locus of the claimants. Respondent No.3 Insurance Company, on the other hand, pleaded that it was not responsible for any liability, as the correct policy particulars were not supplied. Replication was filed and issues were framed leading to trial. One of the issue framed was as follows:-

3. Whether the petitioners in petition No.22 of 1985 are entitled to compensation. If so,from whom and to what extent ?OPA

The Tribunal, after having gone through the evidence led before it, awarded a compensation of Rs.57,600/- to the claimants on account of death of Man Singh. While adjudicating this issue in regard to responsibility of the respondents to pay the compensation, it was held that Ramjhan, appellant was the owner of truck No.RJV 4681 and as such was liable to pay compensation. Smt.Munni alias Santra widow of Rohtas, who had died, driver of truck No.RJV 4681 was also held liable for paying compensation to the extent of property inherited by her from her deceased husband. She was, otherwise, not held personally liable for paying any compensation. Relieving the Insurance Company of its liability, it was observed by the Tribunal that only insurance cover was produced in the evidence by the parties, which was exhibited as Ex.A5. As per this, truck No.RJV 4681 was insured with the Insurance Company on 25.8.1984 and no insurance policy was produced by the respondents. Accordingly, it was held that respondent No.3 Insurance Company would not be liable to pay any compensation because accident took place on 9.1.1985 while cover,

which had been produced, had expired on 24.9.1984.

Though the compensation awarded is challenged on merits as well but nothing could be pointed out before me which could call for any interference.

Counsel for the appellant mainly contended that Insurance Company was wrongly relieved of its liability though appellant had valid insurance policy for the truck in question. C.M.No.6342-CII of 1987 was moved in the present FAO filed in the year 1987 seeking permission to place on record insurance policy in the form of additional evidence. It is noticed that no order was passed in this CM and the appeal was admitted. Accordingly, this application was taken up for hearing and disposed of on 20.9.2006, after due notice to counsel for the Insurance Company by passing the following order:-

> "Notice in this Civil Misc. was issued in the year 1988. In response to the notice, counsel had put in appearance on behalf of the Insurance Company. He had taken time to file reply. The record reveals that the case was adjourned thereafter on several occasions, but no order on the application was made. The appeal was admitted on November 8,1988 without passing any order on the application.
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> Counsel for the appellant submits that this application was moved for placing on record the Insurance Policy in the form of additional evidence. Mr.M.B.Singh, Advocate has put in appearance on behalf of the Insurance Company. He submits that original insurance policy, which is available with the counsel for the appellant, has been shown to him and he

has satisfied about the genuineness of this policy having been issued by the respondent Insurance Company. The application, accordingly, is allowed and the Insurance Policy is permitted to be placed on record in the form of an additional evidence. Application is disposed of accordingly."

Since this insurance policy has been permitted to place on record as an additional evidence, the finding of the Tribunal relieving the Insurance Company of its liability as noticed above cannot be allowed to stand. Insurance policy now available as evidence would clearly show that the offending truck in question had duly been insured with respondent No.3 Insurance Company, a fact, which is now even conceded by the counsel appearing for Insurance Company. Insurance Company is fully satisfied that this insurance policy is genuine one. Accordingly, finding to the effect that the compensation assessed in this case is payable by the present appellant and Smt. Munni alias Santra to the extent of the property inherited by her is set aside. It is now held that Insurance Company respondent No.3 would be liable to pay this compensation. If any compensation had been paid by the present appellant or Smt. Munni alias Santra, they would be entitled to claim the same from Insurance Company-respondent No.3.

Present appeal is allowed in the above terms.

(Ranjit Singh)
Judge

September 20,2006
AS

Whether to be referred to the Reporter? Yes/No